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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, 411, 414, 415, 423, 424, 425, and 455

[CMS-1770-F2]

RIN-0938-AU81

Medicare and Medicaid Programs, CY 2023 Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; Implementing Requirements for Manufacturers of Certain Single-dose Container or Single-use Package Drugs to Provide Refunds with Respect to Discarded Amounts; and COVID-19 Interim Final Rules; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction and correcting amendment.

SUMMARY: In the November 18, 2022 issue of the **Federal Register**, we published a final rule entitled "Medicare and Medicaid Programs; CY 2023 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; Implementing Requirements for Manufacturers of Certain Single-dose Container or Single-use Package Drugs To Provide Refunds With Respect to Discarded Amounts; and COVID–19 Interim Final Rules" (referred to hereafter as the "CY 2023 PFS final rule"). The effective date was January 1, 2023. This document corrects a limited number of technical and typographical errors identified in the November 18, 2022 final rule.

DATES: This document is effective [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], and is applicable beginning January 1, 2023.

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SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2022-23873 of November 18, 2022, the CY 2023 PFS final rule (87 FR 69404), there were technical errors that are identified and corrected in this correcting document. These corrections are applicable as if they had been included in the CY 2023 PFS final rule, which was effective January 1, 2023.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 69413, in the entry "(6) Equipment Cost per Minute," we made a typographical error in the equipment cost per minute formula.

On pages 69596 and 69597, due to technical errors in the calculations of the time thresholds, there were errors in the description of times for reporting prolonged inpatient/observation services for code G0316.

On page 69614, in Table 24: Required Time Thresholds to Report Other E/M Prolonged Services, due to technical errors in the calculations of the time thresholds, there were errors in the description of times for reporting prolonged inpatient/observation services for code G0316.

On page 70032, the titles of two new neurological MVPs that read "Optimal Care for Neurological Conditions" and "Supportive Care for Cognitive-Based Neurological Conditions" contain typographical errors.

On page 70037, the titles of two new neurological MVPs that read "Optimal Care for Neurological Conditions" and "Supportive Care for Cognitive-Based Neurological Conditions" contain typographical errors.

On page 70083, Table 94: Exclusion Redistribution for Performance Period in CY 2023, we inadvertently included a typographical error in the number of measures.

On page 70204, we inadvertently omitted an appendix number and included typographical errors in the titles of two new neurological MVPs.

B. Summary of Errors in the Regulatory Text

On page 70227, we made a typographical error in the regulation text of § 414.940. We inadvertently labeled two paragraphs as paragraph (e).

On page 70228, in amendatory instruction 31.b, we inadvertently omitted language specifying that the revisions to § 414.1380(e)(6)(v) were related to the introductory text only of that section and not to paragraphs (e)(6)(v)(A) and (B) of that section.

C. Summary of Errors in the Appendix

On page 70653, we inadvertently included a reference to footnote "7".

III. Waiver of Proposed Rulemaking

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (the APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in the effective date of a rule after issuance or publication. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions to the APA notice and comment requirement and the delay in the effective date requirement. In cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice requirement, the 60-day comment period requirement, and the delay in effective date requirement of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and includes a statement of the finding and the reasons for it in the rule. In addition, section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in the effective date of a rule where such delay is contrary to the public interest and the agency includes in the rule a statement of the finding and the reasons for it.

In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements. This document merely corrects technical errors in the CY 2023 PFS final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were proposed, subject to notice and comment procedures, and adopted in the CY 2023 PFS final rule. As a result, the corrections made through this correcting document are intended to resolve inadvertent errors so that the rule accurately reflects the policies adopted in the final rule. Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the CY 2023 PFS final rule or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the rule accurately reflects our policies as of the date they take effect. Further, such procedures would be unnecessary because we are not making any substantive revisions to the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received public comment on, and subsequently finalized in the final rule. For these reasons, we believe there would be good cause to waive the requirements for notice and comment and delay in effective date, if notice and comment procedures and the delay in effective date were required at all.

IV. Correction of Errors

A. Correction of Errors in the Preamble

1. On page 69413, third full column, first paragraph, line 5, the line that reads "((interest rate/(1 (1/((1 + interest" is corrected to read ((interest rate/(1 - (1/((1 + interest".

2. On page 69596, third column, the last line that reads "for base code CPT code 99223 when 105" is corrected to read "for base code CPT code 99223 when 90".

3. On page 69596, last column, last paragraph and continuing through the first column, second full paragraph on page 69597, the language that reads: "Thus, a practitioner could bill

G0316 for base code CPT code 99223 when 105 minutes is reached for an initial visit on the date of encounter. For the purposes of applying the proposed prolonged code, the CPT code 99223 total time is rounded to 75 minutes on the date of encounter. The prolonged service period would begin at 90 minutes, 15 minutes beyond 75 minutes. A practitioner would bill HCPCS code G0316 once the 15-minute increment for G0316 is completed, at minute 105.

A practitioner could bill G0316 for the base code CPT code 99233 when 80 minutes is reached for a subsequent visit on the date of encounter. For the purposes of applying the prolonged code, the CPT code 99233 total time is rounded to 50 minutes on the date of encounter. The prolonged service period would begin at 65 minutes, 15 minutes beyond 50 minutes. A practitioner would bill HCPCS code G0316 once the 15-mimute increment for G0316 is completed, at minute 80.

A practitioner could bill HCPCS code G0316 for base code CPT code 99236 at 125 minutes for same-day discharge. For the purposes of applying the prolonged code, the CPT code 99236 total time is rounded to 95 minutes completed within 3 calendar days of the encounter. The prolonged service period would begin at 110 minutes, 15 minutes beyond 95 minutes. A practitioner could bill HCPCS code G0316 once the 15-minute increment for G0316 is completed, at minute 125," is corrected to read: "Thus, a practitioner could bill G0316 for base code CPT code 99223 when 90 minutes is furnished for an initial visit on the date of encounter. For the purposes of applying the proposed prolonged code, the CPT code 99223 total time is rounded to 75 minutes on the date of encounter. A single prolonged service period would end after 90 minutes, 15 minutes beyond 75 minutes. A practitioner would bill HCPCS code G0316 once the 15-minute increment for G0316 is completed, when 90 minutes has been furnished.

A practitioner could bill G0316 for the base code CPT code 99233 when 65 minutes is furnished for a subsequent visit on the date of encounter. For the purposes of applying the prolonged code, the CPT code 99233 total time is rounded to 50 minutes on the date of encounter. A single prolonged service period would end after 65 minutes, 15 minutes beyond 50

minutes. A practitioner would bill HCPCS code G0316 once the 15-minute increment for G0316 is completed, when 65 minutes has been furnished.

A practitioner could bill HCPCS code G0316 for base code CPT code 99236 at 110 minutes for same-day discharge. For the purposes of applying the prolonged code, the CPT code 99236 total time is rounded to 95 minutes completed within 3 calendar days of the encounter. A single prolonged service period would end after 110 minutes, 15 minutes beyond 95 minutes. A practitioner could bill HCPCS code G0316 once the 15-minute increment for G0316 is completed, when 110 minutes has been furnished."

4. On page 69614, in Table 24: Required Time Thresholds to Report Other E/M Prolonged Services, the third column, rows 2, 3, and 4 that read:

Primary E/M Service	Prolonged Code*	Time Threshold to Report Prolonged	Count physician/NPP time spent within this timeframe (surveyed timeframe)
Initial IP/Obs. Visit (99223)	G0316	105 minutes	Date of visit
Subsequent IP/Obs. Visit (99233)	G0316	80 minutes	Date of visit
IP/Obs. Same-Day Admission/Discharge (99236)	G0316	125 minutes	Date of visit to 3 days after

are corrected to read:

Primary E/M Service	Prolonged Code*	Time Threshold to Report Prolonged	Count physician/NPP time spent within this timeframe (surveyed timeframe)
Initial IP/Obs. Visit (99223)	G0316	90 minutes	Date of visit
Subsequent IP/Obs. Visit (99233)	G0316	65 minutes	Date of visit
IP/Obs. Same-Day Admission/Discharge (99236)	G0316	110 minutes	Date of visit to 3 days after

5. On page 70032, third column, third full paragraph:

a. Lines 15 and 16, the bullet that reads "Optimal Care for Neurological Conditions" is corrected to read "Optimal Care for Patients with Episodic Neurological Conditions".

b. Lines 17 and 18, the bullet that reads "Supportive Care for Cognitive-Based Neurological Conditions" is corrected to read "Supportive Care for Neurodegenerative Conditions".

6. On page 70037, third column, third full paragraph:

a. Lines 11 and 12, the bullet that reads “Optimal Care for Neurological Conditions” is corrected to read “Optimal Care for Patients with Episodic Neurological Conditions”.

b. Lines 13 and 14, the bullet that reads “Supportive Care for Cognitive-Based Neurological Conditions” is corrected to read “Supportive Care for Neurodegenerative Conditions”.

7. On page 70083, Table 94: Exclusion Redistribution for Performance Period in CY 2023, second column; last row, that reads “Report the following five measures:” is corrected to read “Report the following two measures:”

8. On page 70204:

a. Second column, last full paragraph, line 5 that reads “the new MVPS in Appendix X of this” is corrected to read “the new MVPS in Appendix 3 of this”.

b. Third column, lines 2 and 3, the bullet that reads “Optimal Care for Neurological Conditions” is corrected to read “Optimal Care for Patients with Episodic Neurological Conditions”.

c. Third column, lines 4 and 5, the bullet that reads “Supportive Care for Cognitive-Based Neurological Conditions” is corrected to read “Supportive Care for Neurodegenerative Conditions.”

B. Correction of Errors in the Appendix

On page 70653, first full paragraph, line 2, the reference to footnote “7” is removed and replaced with the following link added in its place: https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/02/fact-sheet-president-biden-reignites-cancer-moonshot-to-end-cancer-as-we-know-it/.

List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Biologics, Diseases, Drugs, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, CMS corrects 42 CFR part 414 by making the following correcting amendments:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395hh, and 1395rr(b)(l).

2. Amend § 414.940 by redesignating the second paragraph "(e)" as paragraph "(f)".

3. Amend § 414.1380 by adding paragraphs (e)(6)(v)(A) and (B) to read as follows:

§ 414.1380 Scoring.

* * * * *

(e) * * *

(6) * * *

(v) * * *

(A) Other cost measures. MIPS eligible clinicians who are scored under facility-based measurement are not scored on cost measures described in paragraph (b)(2) of this section.

(B) [Reserved]

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Elizabeth J. Gramling,

Executive Secretary to the Department,

Department of Health and Human Services.

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